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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

April 17, 1995

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To whom it may concern:

We request a motion for leave to file late comments in the Matter of Market Entry and Regulation of Foreign-affiliated Entities (FCC 95-53). We regret that we made an error with regard to the deadline for making an original filing. It was our belief that this deadline was April 17.

We respectfully ask that these comments be included in the original filings on this issue before the F.C.C.

If there are any problems, please contact me at 202/659-1903.

Sincerely,

Nancy McLernon

Nancy McLernon
Director, Economic and Legislative Affairs

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

April 17, 1995

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: Notice of Proposed Rulemaking (FCC 95-53) In the Matter of Market Entry and Regulation of Foreign-affiliated Entities

Dear Mr. Caton:

I am writing on behalf of the Organization for International Investment (OFII) to comment on the Notice of Proposed Rulemaking (FCC 95-53) In the Matter of Market Entry and Regulation of Foreign-affiliated Entities released by the Federal Communications Commission (FCC) on February 17, 1995. The comments in this letter also address two legislative proposals concerning foreign ownership in the telecommunications sector: S. 652, introduced by Senator Pressler and H.R. 514 introduced by Congressmen Oxley, Boucher, Fields and Tauzin in the House of Representatives. These proposals would modify or repeal Section 310(b) of the Communications Act of 1934.

The Senate bill and the FCC's Notice of Proposed Rulemaking would condition foreign investment in telecommunications on whether the home country of the investor offers "equivalent market opportunities" or "effective market access" to U.S. carriers. OFII supports the repeal of Section 310(b), but opposes linking market access and other trade issues to the liberalization of investment in telecommunications. OFII's position is grounded on the principle of national treatment. This principle requires countries to treat all domestically incorporated enterprises the same regardless of the nationality of their shareholders. National treatment has long been the cornerstone of the United States' international investment policy.

OFII consists of approximately 50 U.S. companies representing a broad cross section of the manufacturing and service sectors. The parent companies of OFII members are headquartered in countries throughout the world, including the United States' most important trading partners. Our members include some of the largest foreign investors in the United States, employing hundreds of thousands of American workers and conducting research and development at facilities across the country. OFII's primary aim is to support and defend longstanding U.S. policies that favor an open international investment system.

Section 310(b) Should Be Repealed

Section 310(b) of the Communications Act of 1934 limits the amount of private foreign investment in holders of U.S. broadcast, common carrier, and aeronautical radio licenses to 20% direct ownership or 25% if ownership of a licensee is through a holding company. The company may also have no more than 25% foreign directors and no foreign officers. Although the FCC examines requests to exceed these limits on a case-by-case basis, Section 310(b) is seen as a barrier to increased foreign investment in telecommunications.

Section 310(b) is a relic of the post-World War I era. Protectionism and the fear of hostile alien influence on what was, at the time, a limited telecommunications system provided the rationale for these foreign ownership restrictions. Obviously, telecommunications in the U.S. is now vastly different. There are new broadcast networks and satellite services, thousands of cable television operators and new voice and data communications services. The challenge now is to take full advantage of new, emerging technologies to speed the modernization of national and global information infrastructures.

Global telecommunications systems are so capital intensive that proponents of these systems must be able to access global capital markets for financing. Restrictions on foreign ownership deprive the United States of private funding sources to develop the infrastructure for these systems. These restrictions retard the integration of telecommunications companies and services by limiting the ways in which companies can do business, such as prohibiting foreign companies from holding wireless licenses. Foreign ownership restrictions encourage telecommunications technology to move offshore to countries that do not restrict foreign ownership. Section 310(b) has erected a wall around the United States, cutting off the jobs and other opportunities that would flow from increased investment in telecommunications.

The world is clearly headed toward integration of global telecommunications services. The recent G-7 Conference on the Information Society in Brussels focused attention on the important steps being taken within countries to liberalize their telecommunications markets, as well as in multilateral fora such as the Negotiating Group on Basic Telecommunications under the General Agreement on Trade in Service (GATS). Investment in telecommunications also will be on the agenda when the Multilateral Investment Agreement (MIA) negotiations are launched by the Organization for Economic Cooperation and Development (OECD) in May. Additionally, the European Union (EU) has announced its intention to deregulate its market for telecommunications services by 1998, and significant liberalization in the United Kingdom and Sweden has already taken place. For example, 22 U.S.-owned companies currently hold licenses to operate in the United Kingdom, including AT&T, NYNEX, Sprint and Worldcom.

At the World Telecommunications Development Conference in March 1994, Vice President Gore identified private investment as the first principle for building the Global Information Infrastructure (GII). Section 310(b) is standing in the way.

Investment Should Not Be Linked to Market Access

The Senate bill and the FCC's Notice of Proposed Rulemaking would condition the removal of foreign investment restrictions in Section 310(b) on whether U.S. carriers have market access to the countries from which the investment is made. "Equivalent market opportunities" is the standard in the Senate bill and "effective market access" is the proposed FCC test for determining whether to grant a license under Section 310(b). This type of approach appears to be supported by the Administration. At the G-7 conference in Brussels, Vice President Gore proposed to "open foreign investment in telecommunications services in the United States for companies of all countries who have opened their own markets."

It would be a serious mistake to link the removal of investment restrictions in Section 310(b) to market access for telecommunications services. This linkage would establish a dangerous precedent for investment liberalization based on reciprocity. It would hold foreign-owned firms hostage to the policies of their home governments, policies which they have no control over. This linkage would not bring investment in the telecommunications sector any closer to the goal of national treatment.

It is commonly argued that reciprocity conditions in Section 310(b) will act as a crowbar to open foreign markets. Whether restricting investment will give other countries an incentive to open their markets for telecommunications services is an untested and questionable theory. In fact, one could argue that restricting investment will create exactly the opposite incentive, encouraging other countries to build their own walls without creating any leverage for market access, such as the EU's satellite directive which limits U.S. companies' participation in EU satellite projects. Reciprocity conditions attached to Section 310(b) will encourage other countries to adopt reciprocal conditions of their own, which may or may not be applied on a mirror image basis.

Market access conditions in Section 310(b) would deter private capital to build the GII and deprive the United States of the jobs and other opportunities that flow from increased investment, and not only in activities requiring FCC licenses. Expanded investment in U.S. telecommunications will mean increased demand for other products and services, creating a ripple effect throughout the U.S. economy. For example, my own company, Philips Electronics North America, employs over 25,000 workers in the United States with nearly $5 billion in U.S. assets and annual U.S. sales of $7 billion. Expanded investment in U.S. telecommunications will lead to growth in our production of consumer electronics, components, semiconductors and other product lines.

The "snapback" provision in the Senate bill would certainly deter investment. This would allow the U.S. government to withdraw or deny any license or application if the foreign-owned company's government ceased to meet eligibility requirements. No company would be prepared to make the size of investment required in the telecommunications area when the investment could be made worthless by divestiture.

We believe the Federal Communications Commission (FCC) should not be the agency making market access determinations, as allowed for in the Senate bill. Although the FCC is the repository of expertise on communications matters within the Federal government, it does not seem appropriate for an independent regulatory body to be setting the trade policy of the United States. Nor does the FCC have any particular expertise in evaluating other countries' trade policies. In our view, the office of the United States Trade Representative (USTR) is in a better position to balance the various trade considerations that would go into a determination of market access and to coordinate interagency reviews.

Whether the determination is made by the FCC or USTR, however, it should not be made on a case-by-case basis. If market access criteria are used to determine eligibility for investment, we believe the determination should be made on a country-wide basis, and the determination should be made independently from any specific license application to avoid tying up capital during protracted regulatory proceedings.

Multilateral Efforts To Achieve Market Access

These comments in support of the repeal of Section 310(b) are not intended to suggest that there are not legitimate market access concerns by U.S.-owned telecommunications companies. We strongly encourage the U.S. Government's work to further liberalize other countries' telecommunications regimes particularly in the GATS and the MIA negotiations. These multilateral negotiations are the best way to achieve effective market access in telecommunications.

If Section 310(b) is not repealed outright, it would be better in our view to link its application to the successful outcome of the GATS market access negotiations and to strong investment measures for telecommunications in the MIA. For example, an investor would not be subject to Section 310(b) if its home country has committed itself in these agreements to open its telecommunications market and to provide national treatment for U.S. investment in the telecommunications sector. In this way, all countries who choose to play by the same investment rules will be treated in the same way. This approach would provide a strong incentive to other countries to liberalize their telecommunications markets. It would strengthen procedures for the multilateral resolution of trade and investment issues. It would avoid FCC licensing proceedings with contentious and politicized debates over effective market access conditions, and even more contentious and politicized trade proceedings brought by USTR with threats of retaliation and counter-retaliation. It would allow companies in countries with agreed levels of market access and investment liberalization to invest freely in each other's telecommunications markets to achieve the benefits of the GII as rapidly as possible.

Sincerely,

Tom Patton

Thomas B. Patton
President
Organization for International
Investment

Vice President
Government Relations
Philips Electronics
North America